

Modification Report
Changes to Commercial Arrangements in the event of a Network Gas Supply
Emergency
Modification Reference Number 0568
Version 2.0

This Modification Report is made pursuant to Rule 7.3 of the Modification Rules and follows the format required under Rule 8.9.3.

1. The Modification Proposal

It is proposed that for the two types of Network Gas Supply Emergency defined in the Network Emergency Co-ordinator's Safety Case, different Network Code arrangements would apply:

- For a Network Gas Supply Emergency Gas Deficit Emergency (GDE), the present provisions of Section Q 4.1 would continue. These include suspension of gas trading on the On the Day Commodity Market (OCM).
- For a Network Gas Supply Emergency Critical Transportation Constraint Emergency (CTCE), commercial system and User balancing arrangements such as OCM trading would continue to apply throughout the emergency.

In respect of the relevant cash-out prices applied to Users' imbalances, it is proposed that:

- In the event of a GDE, the emergency cash-out price would be set to twice the arithmetic mean of the System Average Prices for the immediately preceding 30 days. This is twice its present value.
- In the event of a CTCE, normal arrangements would apply and there would therefore be no requirement to set a price based upon the previous 30 days' prices.

In respect of claims for financial loss it is proposed that:

- In the event of a GDE, claims for financial loss (existing paragraph Q4.2.5) would be subject to the following principles:
 - Allowed costs should be based on an appellant's total costs and not the cost of an individual source;
 - Intra-group transfers should be deemed to be made at market price;
 - "Windfall gains" should be netted off wherever possible;
 - Reasonable administrative/legal costs of making a claim should be allowed, but subsequent costs of pursuing a claim should not be; and
 - These costs should be limited to 5% of the net claim;
- In the event of a CTCE, the same principles would apply but, in addition, claims would only be considered in respect of gas withdrawn from storage as a result of NEC actions.

In parallel with this Proposal, Transco has submitted material proposals for the revision of the NEC Safety Case and proposed changes to its emergency procedures.

2. Transco's Opinion

Transco supports implementation of this Modification Proposal as the current emergency arrangements are most relevant to a Network Gas Supply Emergency Gas Deficit Emergency.

3. Extent to which the proposed modification would better facilitate the relevant objectives

Transco believes that implementation of this Modification Proposal would be consistent with the efficient operation of its pipe-line system as it would allow normal commercial arrangements to remain in place for a CTCE. Retaining normal commercial arrangement would also be consistent with securing effective competition between relevant shippers and suppliers. In the event of a GDE, setting the cash-out price at a higher level than present would reduce the likelihood of Users having to invoke the appeals procedure and this would be consistent with efficient and economic operation. More efficient operation by Transco of its pipe-line system in the event of a Network Gas Emergency would in turn better facilitate the efficient discharge of Transco's obligations under its Licence with regard to emergencies.

4. The implications for Transco of implementing the Modification Proposal , including

a) implications for the operation of the System:

Transco, in its role as Network Emergency Co-ordinator is already required to identify and notify Shippers of the category of Network Gas Supply Emergency, however, if this Modification Proposal were implemented Transco would no longer suspend commercial arrangements in the event of a CTCE.

b) development and capital cost and operating cost implications:

Transco is not aware of any development costs required to implement this Modification Proposal or of any implications for operating costs.

c) extent to which it is appropriate for Transco to recover the costs, and proposal for the most appropriate way for Transco to recover the costs:

Transco anticipates that implementation of this Modification Proposal would not lead to an increase in costs.

d) analysis of the consequences (if any) this proposal would have on price regulation:

Transco is not aware of any consequences this proposal would have on price regulation.

5. The consequence of implementing the Modification Proposal on the level of contractual risk to Transco under the Network Code as modified by the Modification Proposal

Transco does not anticipate that there would be any consequences on the level of contractual risk to Transco under the Network Code as a result of implementation of this Modification Proposal.

6. The development implications and other implications for computer systems of Transco and related computer systems of Users

Transco does not anticipate any development implications for its computer systems or the related systems of Users.

7. The implications of implementing the Modification Proposal for Users

Users are less likely to suffer financial loss due to better definition of the type of Network Gas Supply Emergency and subsequent financial impact.

8. The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non-Network Code Party

Transco is not aware of any such implications of implementing this Modification Proposal.

9. Consequences on the legislative and regulatory obligations and contractual relationships of Transco and each User and Non-Network Code Party of implementing the Modification Proposal

Transco does not anticipate any consequences on the legislative and regulatory obligations and contractual relationships of each User and non-Network Code Party of implementing the Modification Proposal.

10. Analysis of any advantages or disadvantages of implementation of the Modification Proposal

Advantages: Clearer and more effective rules and procedures for dealing with emergencies.

Disadvantage: Transco has not identified any disadvantages.

11. Summary of the Representations (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)

Representations have been received from the following:

AEP Energy Services Limited (AEP)	Qualified Support
Association of Electricity Producers (Assoc of EP)	Support
British Gas Trading (BGT)	Support
Powergen (PG)	Support
Scottish and Southern Energy (SSE)	Broad Support
Scottish Power Trading UK (SP)	Support
Shell Gas Direct (Shell)	Not Supported
TotalFinaElf Gas and Power Limited (TFE)	Support

Comments were received on the following aspects of the Modification Proposal. BGT also included additional comments but stated that these were "in respect of possible future changes to the claims procedure." and for this reason have not been summarised here. They are, however, attached to this report.

Suspension of Market Mechanisms

Assoc of EP accepted that the "continuation of normal commercial arrangements during a critical transportation emergency would be an improvement on the current arrangements". TFE in supporting this Modification Proposal commented that "Network Gas Supply Emergency arrangements are inadequate and long overdue for revision in order to align them more closely with the current operational and commercial regime that has evolved considerably in recent years." SP stated its belief that "commercial arrangements should continued to be applied for as long as possible during any emergency since a market solution may also be found."

AEP stated its belief that "in nearly all of the identified situations, the market can be relied upon as the most efficient means of securing the safe operation of the transportation system". AEP developed the gas supply deficit scenario and the belief that rising prices would bring the market into balance and cited examples in California and Brazil that demonstrated this. It concluded that "suspension of normal market arrangements should only occur when all market mechanisms have been exhausted and when Transco must take action to ensure the safety and integrity of the pipeline system." AEP also pointed out the contributing measures that Transco is now able to make under its SO incentives and suggested that Transco should "in its balancing principles statement and operational guidelines, make clear how it would seek to stimulate demand side response within operational timescales before declaring a Gas Supply Emergency Gas Deficit Emergency."

Shell in reviewing the effects of having parts of the System constrained whilst continuing normal commercial arrangements, suggested that this would "lead to distortions depending on where shippers have arranged to have gas enter the system and where their customers are. The proposed solution has the potential to create significant winners and losers from an emergency situation. This is more likely to lead to parties being able to exercise temporal monopoly positions in order to (artificially) increase prices rather than securing effective competition between shippers." Shell did, however, "concur with Transco's view that normal commercial operations should be suspended in the event of a GDE."

Transco's Response.

Transco concurs that continuation of normal commercial arrangements during a CTCE is desirable and that this was the unanimous view of the GIEC Commercial Market Implications Work Group (CMIWG). Faced with a prospect of a GDE, Transco would continue to use normal commercial arrangements whilst the NEC considered that system security would be maintained. One of the factors influencing the NEC's decision to declare a GDE would be the quantities of gas available and their associated lead times under commercial arrangements. This would also influence the NEC's decision to proceed from Stage 1, where commercial arrangements are continued to further stages where they are suspended. Whilst Transco recognises that there would be some price distortions in the event of a CTCE it believes that such distortions are best addressed by the efficient operation of the OCM.

Proposed Pricing

Assoc of EP accepted that definition of two types of emergency with different commercial arrangements would be an improvement "on the use of an arbitrary multiplier as proposed by modification 502".

BGT referred to the comments it made in respect of Modification Proposal 0502 "for example in support of the '2 x SAP' cash-out basis" and suggested they applied to this Modification Proposal as well.

SP agreed "that there should be a separate cashout in the event of GDE and the most appropriate form of this would be a multiplier of its current value."

SSE noted that Transco had sought to address the "the concerns raised by respondents to Modification Proposal 0502, in particular the use of the 0.75 multiplier for a Critical Transportation Constraint."

Shell expressed its continued support of "0.75 times 30 day SAP for CTCE as proposed by M502" This was linked to their belief that commercial arrangements should not be suspended. Shell also pointed out that the "industry recommended that 3 times SAP was used as an emergency cash-out for a GDE. This proposal gives no reasons for choosing 2 times SAP instead. Three times SAP was chosen after considerable industry discussion and there appears to be no reason to chose a different amount."

AEP did not "support the continuing use of a default price under a GDE emergency set at twice the average level of System Average Prices over the preceding 30 days." It believed that "continuing to use this pricing formula during periods of emergency will increase the risk that a GDE will be called and will also undermine incentives on shippers and suppliers to forward contract to meet their supply commitments on peak days." It also believed that "shippers who have not made adequate contractual arrangements and expect to be short may have an incentive to act in a way that increases the likelihood of a GDE being called. Shippers will adopt this strategy if they have no ability to manage their demand (eg if they have a domestic portfolio) and believe that imbalance costs under a GDE will be lower than under normal market arrangements." AEP suggested that imbalance prices could "for example, be based on the highest prices at which gas was purchased prior to the GDE being called".

Transco Response

Transco recognises that dispensing with the need for a multiplier in the event of a CTCE has led to an increased level of support for this Modification Proposal when compared with the responses received in respect of Modification Proposal 0502. In respect of a GDE, Transco would point out the debate that occurred in the CMIWG. Whilst recognising that the Ofgem representatives did not at that time concur with the remainder of this Group, the clear consensus reached was that a "2 x SAP" price was more likely to be appropriate than the marginal price applying at the time of market suspension. CMIWG also examined closely the argument on incentives and took into account the fact that Users would have a duty to co-operate with the NEC in the event of a Network Gas Supply Emergency. Transco has no evidence that Users at present act in a way that increases the likelihood of a GDE being called even under the present rules where cash-out takes place at the 30 day average SAP. It can be concluded that such behaviour would be even less likely if the cash-out price were set to double that value. CMIWG had suggested cash-out at 2 x SAP at its meeting on 21 May 2001 and this multiple became more established at its subsequent meetings. The rationale behind this multiple was described in the High Level Principles document adopted by CMIWG and circulated to Users.

Appeals Mechanism

Assoc of EP welcomed "the clarification of the parameters to be considered when making claims for financial loss."

PG believed that implementation of this Modification Proposal "further improves the compensation mechanism proposed by modification 502."

SP stated that its "previous concerns relating to the netting off of windfall gains, and other considerations in claims for financial loss," were "allayed by the specific wording of the changes to code".

SSE also "welcomed the clarification of parameters to be considered when making claims for financial loss."

Shell was not clear "about how 'windfall gains' will be treated. This does not appear to appear in the legal drafting and further thought on this issue will be required. The original proposal included the addition of a clause to deal with income from electricity when a power station is directed on

under PGCA rules. This requires more discussion between the gas and electricity industries before it is taken forward."

AEP did not support the proposed rules believing that they were "not sufficiently well specified to be capable of meaningful interpretation." In particular, AEP referred to the concepts of total costs and netting off of windfall gains and stated its belief that "both of these principles are capable of wide interpretation and should be much better defined to avoid the prospect of dispute and litigation." It also referred to the concept of total costs and suggested that opportunity costs should be taken into account as well.

Transco's Response

Transco welcomes the comments made in respect of clarification of parameters. It would wish to draw attention to the legal text which adds detail to the guiding principles within the Modification Proposal and reduces the scope for interpretation. This has been amended since the issue of the draft Modification

Report to ensure greater clarity while maintaining conformity to the principles embodied within the Proposal.

Whilst the legal text does not use the expression "windfall gains" the concept is embodied through reference to "aggregate net costs".

Transco does not believe that opportunity costs should be included. Calculations of opportunity costs are dependent on the assumptions made and would themselves open the prospect of dispute and litigation.

Detailed Comments on Legal Text

BGT queried whether abbreviated terms could be used to describe the two types of Network Gas Supply Emergency. Transco acknowledges that this has produced lengthy defined terms but favours their use to maintain compatibility with NEC Safety Case terminology.

BGT also pointed out that by implication a change was being proposed to Q3.3.2. This has now been clarified in the legal text and highlights the fact that, with the exception of storage withdrawals, supply side steps only apply to a GDE.

BGT also suggest clarificatory wording in Q3.3.3 to ensure that any Storage Facility within an LDZ is covered by the same provisions as those directly connected to the NTS. Transco believes, however, that the definition of "the System" in Section A1.1 is sufficient clarification.

12. The extent to which the implementation is required to enable Transco to facilitate compliance with safety or other legislation

Transco is unaware of any such requirement.

13. The extent to which the implementation is required having regard to any proposed change in the methodology established under Standard Condition 4(5) or the statement furnished by Transco under Standard Condition 4(1) of the Licence

Transco is unaware of any such requirement.

14. Programme of works required as a consequence of implementing the Modification Proposal

Material changes would be required to NEC and GT procedures. As these changes are material, HSE approval is being sought in parallel with implementation of this Modification Proposal.

15. Proposed implementation timetable (including timetable for any necessary information systems changes)

Transco recommends implementation of this Modification Proposal as soon as possible.

16. Recommendation concerning the implementation of the Modification Proposal

Transco recommends that this Modification proposal be implemented.

17. Restrictive Trade Practices Act

If implemented this proposal will constitute an amendment to the Network Code. Accordingly the proposal is subject to the Suspense Clause set out in the attached Annex.

18. Transco's Proposal

This Modification Report contains Transco's proposal to modify the Network Code and Transco now seeks direction from the Gas & Electricity Markets Authority in accordance with this report.

19. Text

Amend paragraph 1.2.3 to read as follows:

“1.2.3 For the purposes of the Code:

- (a) a “**Network Gas Supply Emergency**” is a network gas supply emergency (as referred to in the NEC Safety Case), namely a Gas Supply Emergency which involves or may involve a loss of pressure in the NTS;
- (b) a “**Network Gas Supply Emergency Gas Deficit Emergency**” is a Network Gas Supply Emergency which arises as a result of:
 - (i) deliveries of gas to the System being insufficient for the purpose of meeting demand for gas on the System;
 - (ii) or a Transportation Constraint affecting the deliveries of gas to the System;
 - (iii) or a Transportation Constraint on the System which does not prejudice the ability of Users to offtake gas from the System;
- (c) a “**Network Gas Supply Emergency Critical Transportation Constraint Emergency**” is a Network Gas Supply Emergency which is not a Network Gas Supply Emergency Gas Deficit Emergency; and
- (d) any other Gas Supply Emergency is a “**Local Gas Supply Emergency**” (that is, local gas supply emergency as referred to in the NEC Safety Case).”

Amend paragraph 3.1.1 to read as follows:

- “(i) . . . whether it is a Potential Network Gas Supply Emergency or of the Stage thereof, and (in the case of a Network Gas Supply Emergency which is not a Potential Network Gas Supply Emergency) whether it is a Network Gas Supply Emergency Gas Deficit Emergency or a Network Gas Supply Emergency Critical Transportation Constraint Emergency, and (in the case of any Gas Supply Emergency), in so far as reasonably practicable, of the nature, extent and expected duration . . .
- (ii) . . . and material developments in respect of the Gas Supply Emergency (including, without limitation, any determination made by Transco pursuant to paragraph 3.5.1); and
- (iii)”

Amend paragraph 3.2.2 to read as follows:

“In a Network Gas Supply Emergency **Gas Deficit Emergency** the application of Section D . . . from the time the Network Gas Supply Emergency **Gas Deficit Emergency** was declared . . . duration of a Network Gas Supply Emergency **Gas Deficit Emergency**, Transco will not take . . .”

Amend paragraph 3.3.2 to read as follows:

“In a Network Gas Supply Emergency **Gas Deficit Emergency** each User shall comply . . .”

Amend paragraph 3.3.3 to read as follows:

“In any Network Gas Supply Emergency Transco may (where appropriate, in lieu of applying...”

Renumber paragraph 3.5 as paragraph 3.6 and insert a new paragraph 3.5 as follows:

“Network Gas Supply Emergency Critical Transportation Constraint Emergency”

3.5.1 If, in the event of a Network Gas Supply Emergency Critical Transportation Constraint Emergency, Transco determines at any time that the application of Section D may have a detrimental effect on Transco’s immediate ability to take Emergency Steps in accordance with paragraph 1.3.1 above, then the application of Section D (other than paragraph 2.4 thereof) will be suspended with effect from such time as may be determined by Transco and notified to Users pursuant to paragraph 3.1.1(ii) and in respect of any later Gas Flow Day falling within the duration of a Network Gas Supply Emergency Critical Transportation Constraint Emergency. Transco will not take any Market Balancing Actions from such time and (in lieu thereof) the Emergency Procedures will apply and Transco’s decisions as to the delivery and offtake of gas to and from the System will be implemented pursuant to paragraphs 3.3 and 3.4.

3.5.2 In the event that paragraph 3.5.1 applies, the provisions of paragraphs 3.3.2, 4.1.1 and 4.2 shall, from the time determined by Transco pursuant to paragraph 3.5.1, apply mutatis mutandis to the Network Gas Supply Emergency Critical Transportation Constraint Emergency as if all references in such paragraphs to a Network Gas Supply Emergency Gas Deficit Emergency were to the Network Gas Supply Emergency Critical Transportation Constraint Emergency.

Amend paragraph 4.1.1 to read as follows:

“In respect of each Day or part of a Day during a Network Gas Supply Emergency Gas Deficit Emergency:

(i) . . . Daily System Entry Capacity . . . ;

. . .

(viii) . . . ; and

(ix) . . . provisions of Section G₂.”

Amend the title of paragraph 4.2 to read as follows:

“Clearing of gas balances following a Network Gas Supply Emergency Gas Deficit Emergency”

Amend paragraph 4.2.1 to read as follows:

“In a Network Gas Supply Emergency Gas Deficit Emergency Section F2 will apply . . .”

Amend paragraph 4.2.2 to read as follows:

“In respect of each Day during a Network Gas Supply Emergency Gas Deficit Emergency:

(i) . . . ;

(ii)”

Amend paragraph 4.2.3 to read as follows:

"4.2.3 For the purposes of this paragraph 4.2 the "**relevant price**" is calculated as:

$$\underline{X * 2}$$

where:

X is the value of the arithmetic mean of the System Average Prices determined under Section F1.2.1 or F1.2.2 but by reference to the 30 Days preceding the Day on which the Network Gas Supply Emergency Gas Deficit Emergency started."

Amend paragraph 4.2.4 to read as follows:

"In applying Section F4 in respect of Days during a Network Gas Supply Emergency Gas Deficit Emergency amounts payable by Transco . . . (for the purposes of Section F4.4.3)."

Amend paragraph 4.2.5 to read as follows:

" . . . the relevant price in respect of the aggregate quantity of gas delivered to the System on a Day during a Network Gas Supply Emergency Gas Deficit Emergency (but not in respect of . . .):

(i) . . . amount of such loss (and which may include an amount in respect of administrative and professional costs incurred by the claimant for the purposes of submitting a claim);

(ii) . . . so that it will not suffer such financial loss and in considering the amount which the claimant should be paid the claims reviewer will have regard to the criteria in paragraph 4.2.6;

. . . "

Add a new paragraph 4.2.6 to read as follows:

"4.2.6 The criteria referred to in paragraph 4.2.5(ii) are:

- (a) account will only be taken of the claimant's aggregate net costs in relation to the aggregate quantity of gas delivered to the System on the relevant Day;
- (b) the maximum amount that can be taken into account in respect of administrative and professional costs incurred in submitting a claim is an amount equal to the lesser of the actual costs incurred and 5% of the total amount payable (if any);
- (c) no account will be taken of any administrative or professional costs incurred by the claimant following submission of the claim; and
- (d) no claim may be made in respect of any uplift or other charge applied by any 33 1/3% Affiliate of the claimant.

Renumber existing paragraph 4.3 as 4.4 and add new paragraph 4.3 to read as follows:

"4.3 Consequences of Network Gas Supply Emergency Critical Transportation Constraint Emergency

4.3.1 Save where paragraph 3.5.1 applies (in which event this paragraph 4.3 shall be of no effect), where a User (the “**claimant**”) believes that it will suffer a financial loss in respect of any gas delivered to the System on a Day during a Network Gas Supply Emergency Critical Transportation Constraint Emergency in accordance with Transco’s instructions to the operator of a Storage Facility (in which the User had gas-instorage) pursuant to paragraph 3.3.3:

- (a) the claimant may within such time as Transco shall reasonably require submit to Transco a claim in respect of such financial loss together with details of the basis on which it believes it will suffer such loss and the amount thereof (which may include an amount in respect of administrative and professional costs incurred by the claimant for the purposes of submitting a claim);
- (b) Transco will appoint an independent accountant or other appropriately qualified person as “**claims reviewer**” to review each claimant’s claim and advise Transco of whether the claim appears to the claims reviewer to be justified and the amount which (in the claims reviewer’s opinion) the claimant should be paid so that it will not suffer such financial loss (and in considering the amount which the claimant should be paid the claims reviewer will have regard to the criteria in paragraph 4.3.2);
- (c) the claimant shall be required (as a condition to its claim being considered, but subject to the claims reviewer accepting a reasonable obligation of confidence) to provide such information, access to records and cooperation as the claims reviewer shall reasonably require;
- (d) the fees and costs of the claims reviewer shall be paid by Transco and shall be additional Monthly Adjustment Neutrality Costs for the month in which they are paid; and
- (e) Transco will (after consultation with the claimant and the Director) pay to the claimant the amount advised by the claims reviewer (unless on Transco’s application after consultation with the claimant the Director shall give Condition 7(4) Approval to Transco’s paying a different amount).

4.3.2 The criteria referred to in paragraph 4.3.1(b) are:

- (a) account will only be taken of the claimant’s aggregate net costs in relation to the aggregate quantity of gas delivered to the System pursuant to paragraph 3.3.3 on the relevant Day;
- (b) the maximum amount that can be taken into account in respect of administrative and professional costs incurred in submitting a claim is an amount equal to the lesser of the actual costs incurred and 5% of the total amount payable (if any);
- (c) no account will be taken of any administrative or professional costs incurred by the claimant following submission of the claim; and
- (d) no claim may be made in respect of any uplift or other charge applied by any 331/3% Affiliate of the claimant.

4.3.3 Save where paragraph 3.5.1 applies, in applying Section F4 in respect of Days during a Network Gas Supply Emergency Critical Transportation Constraint Emergency:

(a) amounts payable by Transco to Users pursuant to paragraph 4.3.1;
and

(b) all such costs as Transco may reasonably incur pursuant to paragraph 3.4,

will be taken into account as though such amounts were Market Balancing Action Charges payable by Transco (for the purposes of Section F4.4.3)."

Signed for and on behalf of Transco.

Signature:

Tim Davis
Head of Regulation NT&T

Date:

Gas and Electricity Markets Authority Response:

In accordance with Condition 9 of the Standard Conditions of the Gas Transporters' Licences dated 21st February 1996 I hereby direct Transco that the above proposal (as contained in Modification Report Reference **0568**, version **2.0** dated **28/08/2002**) be made as a modification to the Network Code.

Signed for and on Behalf of the Gas and Electricity Markets Authority.

Signature:

The Network Code is hereby modified with effect from, in accordance with the proposal as set out in this Modification Report, version **2.0**.

Signature:

Process Manager - Network Code
Transco

Date:

Annex

1. Any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which The Restrictive Trade Practices Act 1976 ("the RTPA"), had it not been repealed, would apply to this Agreement or such arrangement shall not come into effect:
 - (i) if a copy of the Agreement is not provided to the Gas and Electricity Markets Authority ("the Authority") within 28 days of the date on which the Agreement is made; or
 - (ii) if, within 28 days of the provision of the copy, the Authority gives notice in writing, to the party providing it, that he does not approve the Agreement because it does not satisfy the criterion specified in paragraphs 1(6) or 2(3) of the Schedule to The Restrictive Trade Practices (Gas Conveyance and Storage) Order 1996 ("the Order") as appropriate

provided that if the Authority does not so approve the Agreement then Clause 3 shall apply.
2. If the Authority does so approve this Agreement in accordance with the terms of the Order (whether such approval is actual or deemed by effluxion of time) any provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which the RTPA, had it not been repealed, would apply this Agreement or such arrangement shall come into full force and effect on the date of such approval.
3. If the Authority does not approve this Agreement in accordance with the terms of the Order the parties agree to use their best endeavours to discuss with Ofgem any provision (or provisions) contained in this Agreement by virtue of which the RTPA, had it not been repealed, would apply to this Agreement or any arrangement of which this Agreement forms part with a view to modifying such provision (or provisions) as may be necessary to ensure that the Authority would not exercise his right to give notice pursuant to paragraph 1(5)(d)(ii) or 2(2)(b)(ii) of the Order in respect of the Agreement as amended. Such modification having been made, the parties shall provide a copy of the Agreement as modified to the Authority pursuant to Clause 1(i) above for approval in accordance with the terms of the Order.
4. For the purposes of this Clause, "Agreement" includes a variation of or an amendment to an agreement to which any provision of paragraphs 1(1) to (4) in the Schedule to the Order applies.